

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

JAMES BRIAN CHAPPELL, #1003411 §
VS. § CIVIL ACTION NO. 9:05cv13
WILLIAM SHERMAN, ET AL. §

ORDER OF DISMISSAL

Plaintiff James Brian Chappell, an inmate confined at the Polunsky Unit of the Texas prison system, proceeding *pro se*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was referred to United States Magistrate Judge Judith K. Guthrie, who concluded that the Defendants' motion to dismiss should be granted. The Plaintiff has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Plaintiff to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections of the Plaintiff are without merit. It is specifically noted that the present lawsuit is just one of several civil rights lawsuits filed by Polunsky Unit inmates this year alleging that officers in 1997 stole food allotted for inmates. The Plaintiff must show a personal violation of his constitutional rights in order to proceed with a civil rights lawsuit. The Report and Recommendation fully explained that any complaint that the Plaintiff may have about food or any other property being stolen from him fails to state a claim upon which relief may be granted and is wholly frivolous. To the extent that the


Plaintiff may have a possible food claim, his weight of 216 pounds does not give rise to an inference that he is being denied reasonably adequate food. *See Newman v. Alabama*, 559 F.2d 283, 291 (5th Cir. 1977). He has not shown that he has been denied reasonably adequate food. The Plaintiff has not allege facts showing a violation of his constitutional rights. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the Defendants' motion to dismiss (docket entry #68) is **GRANTED**. It is further

ORDERED that the complaint is **DISMISSED** with prejudice. Fed. R. Civ. P. 12(b)(6). It is finally

ORDERED that all motions by either party not previously ruled on are hereby **DENIED**.

SIGNED this the **9** day of **December, 2005**.


Thad Heartfield
United States District Judge